IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.

Regular First Appeal No. 272 of 1998.

Date of Decision: 13th December, 2007.

State of H.P. ***… Appellant***

Vs.

Navin Chand and another ***….Respondents.***

Coram

The Hon'ble Mr. Justice Dev Darshan Sud,Judge.

Whether approved for reporting?[1]

For the appellant: Mr. Rajan Dewan, Addl. Advocate General.

For the Respondents: Mr. Bhupinder Gupta, Sr. Advocate with Mr. Neeraj Gupta, Advocates.

Dev Darshan Sud, Judge.

This appeal has been preferred by the State of Himachal Pradesh against the judgment passed by the learned Additional District Judge (1), Kangra at Dharamshala, accepting the reference petition filed by the claimants-respondents. The facts relating to the purpose of the acquisition and the details of the land etc. are not disputed before me. Learned reference court enhanced compensation payable to the claimants both for the land as also the tea bushes. Aggrieved by this order, the state has appealed.

I have heard learned counsel for the parties and have gone through the record. Learned Additional Advocate General

[1] Whether Reporters of Local Papers may be allowed to see the judgment?

urges that the determination made by the reference court is not in accordance with law and that there is no material on the record justifying the rate awarded for the land as also for tea bushes. It is submitted that reliance which has been placed by the reference court on the statement of PW-6 Surinder Singh, Technical Officer, is against law. By reference to the material on the record, learned Additional Advocate General submits that the judgment cannot be sustained from any angle.

I have considered the record in detail. I do not find that there is any material on which the judgment of the reference court can be faulted with. The assessment value of the land as also the tea bushes has been made by the learned reference court on a detailed consideration of the evidence both oral and documentary on the record.

I have been taken through the evidence on record. The matter was in appeal in this court in RFA No. 80 of 1986, whereby the judgment of the Reference Court was set aside and the matter remanded for decision afresh and parties granted permission to adduce evidence with respect to the income yielded from the land.

The claimant re-examined himself and the State produced RW-2 Paras Ram Patwari. The evidence led by the respondent/appellant does not even remotely suggest that the acquired land was not a tea garden. RW-2 has appeared in the witness box on 16.1.1998 and talks about the events which have occurred in the year 1993 and prior to that. He says that the claimant had stated that he did not want any compensation for the tea bushes

and the income derived therefrom. He admits that the tea plants were in good condition. In cross examination, he admits that no such statement alleged to have been made by the claimant Shri N.N. Sareen was recorded. He says that this was the subject matter of correspondence between the claimant and the Collector. No written record has been produced to justify the stand of the appellants/ respondents that the claimant had waived or foregone his claim for compensation of the income as also the value of the tea bushes standing on the land. He expresses ignorance about the income derived from the land/tea garden.

The learned court has placed reliance on the supplementary award Ext. R-3 placed on the record of the respondents holding that there were 3680 bushes on the entire land. The learned court holds that this is an authentic document prepared by the Land Acquisition Collector after following the proper procedure and there is nothing to doubt its authenticity. Both parties admitted that in case this is not taken into consideration, it would be difficult to decide or determine the market value of the acquired land and the supplementary award be treated as part of the main award. Learned reference court holds and rightly that this supplementary award Ext. R-3 (inter se between the parties) cannot be brushed aside. It is attained finality and has been accepted by both the parties to this appeal. PW-6 Surinder Singh is the Technical Officer (T) in the Industry Department, at Palampur who has testified regarding yield and value of the tea leaves. The award which has been made in favour of the petitioner is based on the testimony of

PW-6 for the reasons that there is nothing in his cross examination to discredit his testimony. The court after calculating the yield for bushes deducted from it, the processing charges etc and then applied a multiplier to reach the correct figure of the yield from the land. I have not been persuaded to take a different view than the one taken by the learned reference court on a detailed consideration of the evidence on record. RWs-1 and 2 have testified in a bureaucratic manner stating nothing from the record purportedly proving the case of the appellant/respondent. Merely stating that there was no yield on the land etc. will not detract from the facts established by the plaintiff including the testimony of the expert PW-6 who is Technical Officer with the Government How those facts regarding yield etc. be recalled by RW 1 and RW 2 after 10 to 15 years is not clear. Even reading the evidence on the record as it is, it becomes difficult to hold that the submission made by the learned Additional Advocate General is correct. There is thus no merit in his submission that the compensation which has been awarded is against the established facts on record.

Learned counsel appearing for the respondents submits that the award is not in accordance with law laid down by the Hon'ble Supreme Court in **Sunder vs. Union of India (2001) 7 SCC 211** holding that:-

> "24. The proviso to Section 34 of the Act makes the position further clear. The proviso says that "if such compensation" is not paid within one year from the date of taking possession of the land, interest shall stand escalated to 15% per annum from the date of expiry of the said period of one year "on the amount of

> compensation or part thereof which has not been paid or deposited before the date of such expiry." It is inconceivable that the solatium amount would attract only the escalated rate of interest from the expiry of one year and that there would be no interest on solatium during the preceding period. What the legislature intended was to make the aggregate amount under Section 23 of the Act to reach the hands of the person as and when the award is passed, at any rate as soon as he is deprived of the possession of his land. Any delay in making payment of the said sum should enable the party to have interest on the said sum until he receives the payment. Splitting up the compensation into different components for the purpose of payment of interest under Section 34 was not in the contemplation of the legislature when that section was framed or enacted."

He also places reliance on **Nagpur Improvement Trust vs. Vasantrao and others (2002) 7 SCC 657** reaffirming this decision. He submits that interest is payable even on the sum payable under Section 23 (1-A)

Learned Additional Advocate General appearing for the appellant submits that no appeal having been filed by the claimants, this claim cannot be allowed. This submission of the State cannot be accepted. The two judgments passed by the Hon'ble Supreme Court are binding on all courts of law in India. The matter was pending in this court, and the law laid down would be applicable in the case The respondents would be entitled to the relief not only under the principle enshrined in Article 141 and 142 of the Constitution of India laying down that the judgment of the

Hon'ble Supreme Court binds all inferior courts, but also under Order 41 Rule 33 of the Code of Civil Procedure relief can be granted to a party to an appeal even if no appeal has been preferred provided such relief can be culled out from the material on record. In the facts and circumstances, this appeal is dismissed. Claim of the respondents for interest in accordance with law laid down in the two judgments of the Hon'ble Supreme Court is allowed. There shall be no order as to costs.

13th December, 2007. **(Dev Darshan Sud),**
(cm) **Judge.**